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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MOODY WOODROW TANKSLEY,

Defendant and Appellant.

F056278

(Super. Ct. No. BF113286A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Richard J. Oberholzer, Judge.

Alan Mason, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Levy, Acting P.J., Cornell, J. and Dawson, J.

A jury convicted appellant, Moody Woodrow Tanksley, of possession of a flammable, explosive, or combustible material with intent to set a fire or burn property (Pen. Code, § 453, subd. (a)).¹ In a separate proceeding, the court found true allegations that Tanksley had two prior convictions within the meaning of the three strikes law (Pen. Code, § 667, subds. (b)-(i)). On February 28, 2007, the court struck one of Tanksley's strike convictions and sentenced him to a four-year term: the middle term of two years doubled to four years because of his remaining strike.

Tanksley appealed, arguing, in pertinent part, that the clerk erred by failing to memorialize in the minute order that the court struck one of his strikes and the court's statement of reasons for doing so.² In an unpublished opinion in case No. F052507 filed April 29, 2008, this court agreed and remanded the matter to the trial court so that it could correct its minute order.

On this appeal, Tanksley contends that remand is again necessary because the clerk again failed to memorialize in the minute order the court's statement of reasons for dismissing one of Tanksley's prior strike convictions. Respondent concedes and we agree.

DISCUSSION

Penal Code section 1385, subdivision (a) provides:

“The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.”

The requirement that reasons for the dismissal must be set forth in the minutes is mandatory. (*People v. Bonnetta* (2009) 46 Cal.4th 143, 151.)

¹Respondent's request to take judicial notice of the record in case No. F052507 is granted.

²In striking the prior conviction, the trial court noted that Tanksley suffered from a mental illness and that he was not actually endangering anyone at the time of his arrest.

Accordingly, since the clerk's minutes do not memorialize the court's statement of reasons for striking one of Tanksley's prior strike convictions, we will again remand this matter to the trial court for this purpose.

DISPOSITION

The case is remanded for the clerk to amend the court minutes to indicate in the minutes the trial court's stated reasons for striking one of Tanksley's serious felony allegations. The amended clerk's minutes shall be forwarded to the appropriate authorities. The judgment is affirmed.